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PATENT AND  
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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
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#14

In re Application of :  
Claudio Cavazza :  
Serial No.: 09/777,874 : PETITION DECISION  
Filed: February 7, 2001 :  
Attorney Docket No.: 200427US0 :

This is a decision on the petition under 37 CFR 1.181, filed October 8, 2002, to require the examiner to give full consideration to a declaration filed under 37 CFR 1.132.

#### BACKGROUND

A review of the file history shows that the examiner mailed applicant a first Office action on July 2, 2001, setting a three month shortened statutory period for reply. The Office action rejected claims 11-30 (the only pending claims in the application) for various reasons. Claims 16, 18, 21, 23-24 and 26 were rejected under 35 U.S.C. 112, second paragraph, as indefinite. Claim 30 was rejected for obvious double patenting over USP 6,217,898. Claims 11-15, 19-21 and 23-27 were rejected under 35 U.S.C. 102(b) as anticipated by Wiegand or Burtle. Claims 11-30 were rejected under 35 U.S.C. 103(a) as obvious over Moffett. Claims 11-15, 19-20 and 22-30 were rejected under 35 U.S.C. 103(a) as obvious over Wiegand in view of Leung. Claims 11-30 were further rejected under 35 U.S.C. 103(a) as obvious over Hastings in view of Wiegand or Burtle. Claim 18 was rejected under 35 U.S.C. 103(a) as obvious in view of Hastings in view of Wiegand or Burtle and in further view of applicant's statements. Claim 23 was rejected under 35 U.S.C. 103(a) as obvious over Hastings alone or in view of Wiegand or Burtle further in view of Weiner and Stracher. Lastly, claims 28-30 were rejected as obvious over Wiegand or Burtle in view of Moffett or Hastings or Cavazza.

Applicant replied timely on January 2, 2002, including a three month extension of time and fee therefor and arguing each of the rejections. An affidavit under 37 CFR 1.132 by Franco Gaetani was provided which purportedly showed unexpected results. Applicant also canceled claim 19 and amended claims 11-18, 20 and 24. Claim 31 was added.

The examiner considered the reply and the affidavit in a Final Office action mailed March 6, 2002. The examiner continued to reject the claims as follows: Claims 11-18 and 20-31 were rejected under 35 U.S.C. 103(a) as unpatentable over Wiegand alone or in view of Moffett. In discussing this rejection and applicant's reply to it the affidavit results were discussed and found to be insufficient to overcome the rejection. These reasons are presented in the paragraph bridging pages 3-4 of the action. Claims 11-18 and 20-31 were rejected under 35 U.S.C. 103(a) as unpatentable over Hastings alone or in view of Wiegand or Burtle. Claim 18 was rejected as unpatentable over Hastings alone in view of Wiegand or Burtle in view of applicant's statements of the prior art. Claim 23 was rejected under 35 U.S.C. 103(a) as unpatentable over Hastings alone or in view of Wiegand or burtle further in view of Weiner or Stracher. Lastly, claims 28-30 were again rejected under 35 U.S.C. 103(a) as unpatentable over Wiegand or burtle in view of Moffett or Hastings further in view of Cavazza.

Applicant reports holding an interview with the examiner (no examiner interview summary appears in the file) as noted in the Amendment After Final Rejection filed June 6, 2002, in which claim 11 was amended and the rejections argued as well as the value of the affidavit. The examiner mailed an Advisory action to applicant on June 19, 2002, denying entry of the amendment as raising new issues, although applicant implies that the amendment was suggested by the examiner in the interview (see page 2, second paragraph of the amendment). It is also noted that claim 20 specifies a ratio of (i) to (ii) of 1:1 to 1:100, but the amendment ratio is 2:1. Thus claim 20 would be outside the limitations of claim 1 as proposed to be amended.

Subsequent to the Advisory action applicant filed a Notice of Appeal on July 8, 2002 and an Appeal Brief and this petition both on October 8, 2002.

## DISCUSSION

Applicant's petition alleges that the affidavit under 37 CFR 1.132 has not been fully considered by the examiner and sets forth three points which are considered to not have been considered. Applicant requests that the Office accept the T-test as a conventional test to determine statistical significance of differences between groups. Further applicant asks that the Office recognize that the T-test scores in the affidavit show statistically significant differences. Lastly applicant asks that the Office accept the differences as showing synergistic results.


The purpose of petitions under 37 CFR 1.181 is to allow applicant to request correction of an inappropriate or incorrect procedure during examination or to correct an examiner error in prosecution. Applicant's arguments summarized above are directed to interpretation of data presented in an affidavit. The examiner has indicated consideration of the affidavit and presented reasons why the affidavit was not sufficient to overcome the rejections under 35 U.S.C. 103(a) or considered as presenting unexpected results. Such is not indicative of examiner error, but is indicative of a difference of opinion between applicant and the examiner as the representative of the Office. Such differences of opinion are properly appealed to the Board of Patent Appeals and Interferences which applicant has done. A cursory review of the Appeal Brief shows that these same arguments are presented therein and will be appropriately responded to by the examiner in the Examiner's Answer or other appropriate action.

## DECISION

Applicants' petition is **DENIED**.

**The application will be forwarded to the examiner for further consideration.**

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 305-7230.

  
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